

---

# Errors and Omissions

Finance Administration Operations Committee

January 15, 2014

---

# Agenda

---

- ▶ **Reasons contracts and plans change**
- ▶ **Errors and omissions defined**
- ▶ **Tollway process**
- ▶ **Successful design track record**
- ▶ **Minimal recoverable costs to date**
- ▶ **Continually seek best practices**
- ▶ **Discussion**

# Reasons Plans and Contracts Change

---

*Change is common in large capital programs*

- ▶ **Accelerated program schedules**
- ▶ **Differing site conditions**
  - ▶ Unidentified utilities
  - ▶ Unidentified and unsuitable soil conditions
- ▶ **Specification changes**
  - ▶ Tollway initiated
  - ▶ Other agency initiated
- ▶ **Balance final field measurements**
- ▶ **Errors and omissions**
- ▶ **Miscellaneous (such as weather)**

# Errors and Omissions Defined

---

- ▶ **Error:** An incorrect, conflicting, insufficient or ambiguous plan or specification detail or contract administration action
- ▶ **Omission:** A failure to indicate on drawings, specifications or other products of professional service the requirement for a feature, system or equipment necessary for the complete and proper function of a project

# Tollway Process

---

**Contract Cost Change Controls Committee (C5) comprised of representatives from Engineering, Procurement, Finance and Audit reviews all construction contract changes**



**C5 Committee identifies potential E and O items**



**E and O items of more than \$50,000 in construction change value reviewed in detail for possible cost recovery**



**Design consultant notified and provided an opportunity to submit additional information or dispute E and O**



**Chief Engineer makes final determination**

# Excellent Design Track Record

- ▶ Qualified and professional people performing the work
- ▶ Perform detailed plan reviews at each design submittal
- ▶ Manage quantities in construction process effectively
  - ▶ One measure of design success is the cost of changes in construction (CO/EWOs)
  - ▶ The Tollway has substantially lower costs of construction changes compared to industry average

Percentage of change compared to total construction costs	
Industry average*	5 to 10 percent
Illinois Tollway	Less than 1 percent

\*American Council of Engineering Consultants Library: Model for Qualifying the Impact of Change Orders on Project Costs for US Roadwork, December 2009

# Minimal Recoverable Costs To Date

---

- ▶ **Few potential E and O items identified**
  - ▶ From 2005 to 2013, nearly 15,000 Authorizations to Proceed (ATPs) approved; 243 identified as potential E and O for further evaluation
- ▶ **Recoverable costs are not the total value of the change, but those costs that would not have been incurred had the plans been correct**
- ▶ **Of the 209 potential E and O items that have been evaluated to date, only \$20,000 was identified as recoverable**

# Continual Review for Best Practices

---

*Reviewed recommended process American Association of State Highway and Transportation Officials (AASHTO) and benchmarked local agencies and other states*

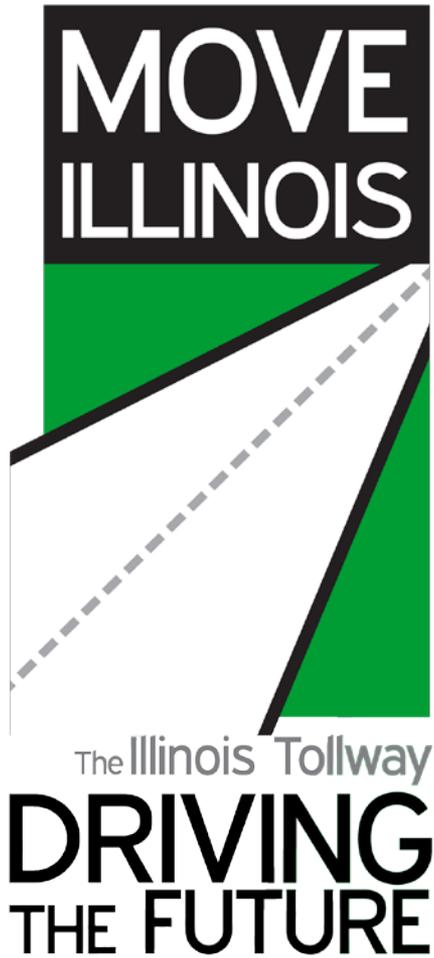
- ▶ Track changes due to E and O
- ▶ Identify procedure to review significant E and O
- ▶ Use committee of experts for significant E and O
- ▶ Maintain appropriate threshold for E and O review
- ▶ Involve design consultant in discussions

Arizona Department of Transportation  
California Department of Transportation  
Chicago Department of Aviation  
Illinois Department of Transportation  
Texas Department of Transportation  
Wayne County Airport Authority

# DISCUSSION

---

- ▶ **What other best practices should we consider as part of our evaluation of the 2013 E and O items?**
- ▶ **Moving forward, what should be the threshold for evaluating recovery of costs?**
- ▶ **Is there value in a third-party review that warrants the cost?**



# Appendix

# Compliance with AASHTO

---

- ▶ **AASHTO recommended process:**
  - ▶ Discovery – Agency conducts initial review of circumstances
  - ▶ Initial notification – Agency notifies consultant, requests their involvement
  - ▶ Investigation/decision on liability
  - ▶ Notification to consultant
  - ▶ Review meeting(s) with consultant
  - ▶ Alternative dispute resolution
  - ▶ Recovery and collection
  - ▶ Litigation
  
- ▶ **Because litigation is expensive and time-consuming, AASHTO encourages agencies to build methods of dispute resolution into their contracts. These methods should encourage:**
  - ▶ Bringing together all parties quickly
  - ▶ Focusing on fixing the design problem first, then addressing cost responsibility and recovery
  - ▶ Consulting a state attorney general’s office for information on appropriate alternative dispute resolution procedures
  - ▶ Instituting a process that is fair and moves quickly to resolution

# Local Agency Benchmarks

---

## ▶ IDOT

- ▶ Consultants notified of liability have 30 days to respond, process and move to dispute resolution if necessary
- ▶ E and O threshold:
  - ▶ If construction less than \$2 million, E and O amount limited to \$20,000
  - ▶ If construction between \$2 and \$10 million, E and O amount limited to 1 percent of contract
  - ▶ If construction greater than \$10 million, E and O amount limited to \$100,000

## ▶ Chicago Airport System

- ▶ Uses reviewing committee that reviews alleged E and O, prepares written analysis and meets with consultants to resolve E and O

## ▶ Wayne County Airport Authority

- ▶ Designer pays an administrative service fee of 5 percent of actual cost of each construction change

# Arizona DOT E and O

---

- ▶ **As E and O are identified**, ADOT performs a review, notifies the consultant, documents their decision on whether a claim is justified and content of the claim, and provides for consultant administrative review if the matter cannot be resolved (“MGT 00-2...,” Nov. 3, 2000, pp. 2-3).
- ▶ **ADOT will estimate additional costs** arising from the E and O based on the amount above that expected in the contractor’s bid had the E and O not occurred.
  - ▶ If the additional cost exceeds the lesser amount of five percent of the contractor’s bid or \$20,000, ADOT may file a formal claim. The amount of the initial claim will be the additional costs less the threshold value. Any future E and O claims on the project will not be subject to reduction by the threshold value.
- ▶ **Unresolved claims over \$100,000** will be forwarded to the attorney general’s office.

# CalTrans E and O

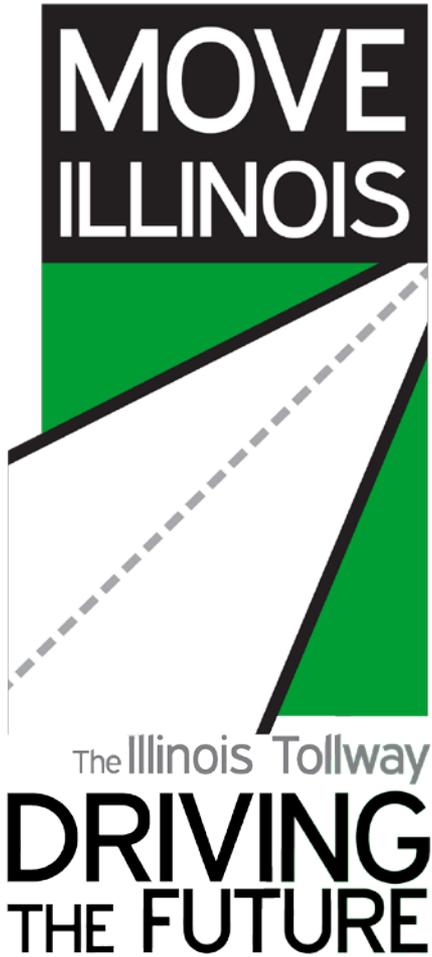
---

- ▶ **As a guideline**, contract change orders (CCOs) greater than \$200,000 related to design changes, conflicts, ambiguities, errors and omissions and cumulative CCOs exceeding 10 percent of the construction project bid likely warrant further review and the matter is forwarded to the chairperson of the Management Review Panel (MRP).
- ▶ **The MRP submits its recommendation** to the chief engineer. If the chief engineer approves further action, he will appoint a representative or team to provide notice to the consultant and enter into informal discussions to resolve the matter. Caltrans' legal division and the chief engineer will be kept apprised of the status of discussions.
- ▶ **Alternative dispute resolution methods may be considered** if agreeable to both parties. The consultant should be allowed to take part in discussions of additional costs due to design liability for which he may be held liable.
- ▶ **If a resolution is not attained**, the representative will consult with the legal division and recommend to the chief engineer if additional action should be taken.

# Texas DOT E and O

---

- ▶ **Change orders are tagged with a reason code identifying the cause of the change.**
- ▶ **If an E and O results in a change order,** TxDOT must notify the consultant and give that firm an opportunity to address the matter. The amount of the recoverable cost is that which would not have been incurred had the plans been correct.
- ▶ **The consultant must reimburse these costs** in cash; in-kind services by the consultant are not acceptable as payment.
- ▶ **A certified initial notification letter will be sent** to the consultant describing the alleged E and O, related additional costs, and references to pertinent events. The consultant will be asked to respond within 30 days. If the consultant does submit payment, it is credited according to the procedural guidelines as a refund of expense on the affected construction project.
- ▶ **If the consultant does not make payment,** TxDOT may consider legal action. If litigation is the only remaining recourse, TxDOT will work with the state attorney general's office.



THANK YOU